

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

George Moore,

Plaintiff,

v.

Case No. 2:11-cv-132

**Warden, Pickaway Correctional
Institution, et al.,**

**Judge Michael H. Watson
Magistrate Judge King**

Defendants.

OPINION AND ORDER

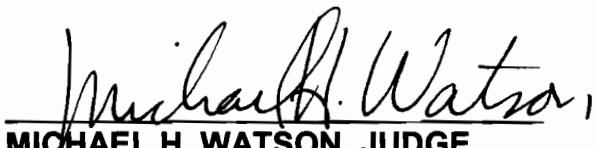
On June 28, 2011, the United States Magistrate Judge recommended that Plaintiff's motion for default judgment be denied. *Report and Recommendation*, ECF No. 18. This matter is now before the Court on Plaintiff's objection to that recommendation. ECF No. 24. The Court will consider the matter *de novo*. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

As the Magistrate Judge noted, Defendants' *Answer* to the *Amended Complaint* was filed within forty-five days after service of process was effected on them by the United States Marshal Service. *Answer*, ECF No. 15. This filing was timely in accordance with the Court's prior order. *See Order*, ECF No. 7.

In his objection, Plaintiff nevertheless contends that Defendants are in default because they never filed an answer to the original *Complaint*. However, Plaintiff's *Amended Complaint* was filed on April 19, 2011, ECF No. 9, i.e., prior to the time that Defendants were served with process. The *Amended Complaint* superseded the original *Complaint* and is the pleading to which Defendants were required to respond.

Because their response to the *Amended Complaint* was filed within the time established by the Court, Defendants are not in default.

Plaintiff's objection to the *Report and Recommendation* is **DENIED**. The *Report and Recommendation* is **ADOPTED and AFFIRMED**. Plaintiff's motion for default judgment, ECF No. 16, is **DENIED**.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT